

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CONTINENTAL CASUALTY CO.,

Plaintiff,

v.

GOLDLINE INTERNATIONAL, INC.,

Defendant.

GOLDLINE INTERNATIONAL, INC.,

Counter-Claimant,

v.

CONTINENTAL CASUALTY CO.

Counter-Defendant.

Case No. CV 12-08658 CAS (AJWx)
Assigned to District Judge:
Hon. Christina A. Snyder

**PROTECTIVE ORDER
GOVERNING CONFIDENTIAL
INFORMATION**

Discovery Cutoff: October 15, 2013
Motion Cutoff: January 31, 2014
Trial Date: April 1, 2014

After having reviewed the Stipulation of the Parties Regarding Confidentiality of Documents and Things, and good cause appearing, this Court orders as follows:

1. This Stipulation and Order governs the use of all produced

1 documents, responses to interrogatories and requests for admissions, deposition
2 transcripts, and any other information, documents, objects or things, as well as any
3 and all copies, abstracts, digests, notes, and summaries thereof, that have been or
4 will be produced by any party or third-party (the “Producing Party”) in this
5 Litigation pursuant to the Federal Rules of Civil Procedure. These materials are
6 collectively referred to hereinafter as “Discovery Material.”

7 2. Any Discovery Material produced by any party or third-party as part
8 of discovery in this Litigation may be designated by the Producing Party as
9 “CONFIDENTIAL” as follows:

10 11 (a) The Producing Party may designate as “CONFIDENTIAL” any
12 Discovery Material that it produces in this Litigation which it
13 believes constitutes, contains, reflects or discloses confidential, non-
14 public research and analysis, development or commercial
15 information, or other information for which a good faith claim of
16 need of protection from disclosure can be made under the Federal
17 Rules of Civil Procedure and/or other applicable law (“Confidential
18 Material”).

19 20 3. No Discovery Material shall be marked “CONFIDENTIAL” if it:
21 22 (a) Was known to the receiving party without obligation of
23 confidentiality prior to disclosure by the Producing Party, as
24 evidenced by the receiving party’s written records;
25 (b) Is subsequently disclosed to the receiving party by a third-party
26 having no obligation of confidentiality to the Producing Party with
27 respect to such information;
28 (c) Is independently developed by employee(s) of the receiving party
29 who had no access to such information before such development; or
30 (d) Is published or becomes generally known to the public through
31 means not constituting a breach of this Order or an obligation of
32 confidentiality to the producing party.

33 Furthermore, information already in the possession of the Receiving Party
34 shall not become Confidential Information merely because the Producing Party
35 produces copies stamped Confidential Information.

36 37 4. Any Discovery Material that is produced during this Litigation
38 voluntarily, in response to a discovery request, or pursuant to a Court Order, in
39 oral, written, or other form, including as part of any document, including but not

1 limited to transcripts, exhibits, answers to interrogatories, as well as any physical
 2 object, recording, electronic file, or other thing, that is asserted by the Producing
 3 Party to contain or constitute Confidential Material shall be so designated by the
 4 Producing Party.

5 (a) Documents and Physical Items: If Confidential is contained in a
 6 document or other physical item, such documents and physical items
 7 shall be clearly and prominently marked on their face with the
 8 appropriate legend: "CONFIDENTIAL". When an item (such as a
 9 disk) containing more than one electronic file is produced and the
 10 item bears a confidentiality stamp, all electronic files on that disk
 11 shall be deemed so designated unless an individual file on the item
 12 contains a higher designation.

13 (b) Transcripts: Deposition or other pretrial testimony may be designated
 14 as "Confidential" by (i) a statement on the record, by counsel, at the
 15 time of such disclosure, or (ii) written notice sent to all counsel of
 16 record for the parties within fifteen (15) business days after receipt of
 17 the transcript of the deposition or other pretrial testimony unless the
 18 parties agree to an extension of this time period for designation. All
 19 transcripts shall be considered to contain wholly Confidential
 20 Material and shall be fully subject to the relevant portions of this
 21 Order for that period of fifteen (15) business days after the deposition
 22 transcript becomes available. Notwithstanding any provision of this
 23 subsection, Discovery Material used or referenced during a
 24 deposition or other pretrial testimony shall maintain any
 25 confidentiality designation accorded such material hereunder
 26 regardless of the designation of any part of the transcript.

27 (c) Information in Other Forms: All Confidential Material not reduced to
 28 documentary, tangible, or physical forms or that cannot be
 29 conveniently designated shall be designated by the Producing Party
 30 by notifying all parties of the appropriate designation in writing.

31 5. In the absence of written permission from the Producing Party or
 32 court Order, Discovery Material designated as "CONFIDENTIAL" shall not be
 33 disclosed to any person other than the following individuals, who are each deemed
 34 a "Qualified Person" under this Paragraph:

35 (a) counsel of record for parties to this Litigation and their support staff,
 36 including paralegals and clerical assistants;

37 (b) opposing parties and their representatives, officers, directors, and/or
 38 employees;

39 (c) subject to the provisions of paragraphs 6 and 8 below, non-party
 40 witnesses who are called to be deposed during discovery or trial,
 41 whether willingly or under subpoena issued by a court of competent
 42 jurisdiction over the witness;

43 (d) stenographic, court reporting, or clerical personnel;

44 (e) subject to the provisions of paragraph 6 and 8 below, officers and/or
 45 employees of any party who (i) are directly involved in, and whose
 46 access to such Discovery Material is reasonably required for, the
 47 management, prosecution, defense, or settlement of this Litigation or

the supervision of counsel of record and (ii) have read this Order and agreed in writing to be bound by it pursuant to the undertaking found on Exhibit A;

(f) subject to the provisions of paragraph 8 below, experts and consultants and their staff who are employed for the purposes of this Litigation; and

(g) the Court, including necessary secretarial, clerical, and support personnel assisting the Court.

6. The inadvertent or unintentional disclosure by the Producing Party of Confidential, regardless of whether the material was so designated at the time of disclosure, shall not be deemed a waiver in whole or in part of the Producing Party's claim of confidentiality, either as to the specific information disclosed or as to any other information relating to the same or related subject matter, provided that the Producing Party shall promptly upon discovery of the inadvertent or unintentional disclosure notify the receiving party in writing that the information is Confidential. Such notification shall constitute a designation of the information and thereby subject it to the provisions of this Order. Disclosure by the receiving party of inadvertently or unintentionally disclosed Confidential Material prior to receipt of such notice shall not be deemed a violation of this Order. However, those persons to whom disclosure was made are to be advised by the receiving party that the information is Confidential and must be treated in accordance with this Order, and the receiving party must (1) make a good faith effort to retrieve and return all copies of such inadvertently disclosed information which have been disseminated to unauthorized persons, including any notes, summaries, compilations or other documents concerning same, and (2) immediately mark, in accordance with the designations made by the producing party, all copies of such inadvertently disclosed Confidential Material which are in the possession of authorized persons.

7. No person described under Paragraphs 5(c), 5(e), 5(f), 6(b), 6(c), and 6(f) may access Discovery Material designated as "CONFIDENTIAL" until such person agrees to be bound by the terms of this Order by executing the undertaking in Exhibit A. Before any other person

1 described in Paragraphs 5 and 6 is shown any Confidential Material, that person
2 must be shown a copy of this Protective Order and instructed that he or she is
3 bound by its provisions.

4 8. If Discovery Material subject to a claim of attorney-client privilege,
5 work product protection, or any other privilege or immunity is inadvertently
6 produced, such production shall in no way prejudice or otherwise constitute a
7 waiver of, or estoppel as to, any claim of privilege, work product protection, or
8 other ground for withholding production to which any Producing Party would
9 otherwise be entitled. Any inadvertently produced materials shall be returned
10 promptly to the Producing Party upon request and all copies destroyed.

11 9. The parties may also informally agree in writing that Confidential
12 Material may be disclosed to a person not otherwise qualified under this Order to
13 receive such information. In the event that a party intends to disclose Confidential
14 Material to a person not qualified to receive such information hereunder (for
15 example, for use at a deposition), and the parties cannot informally agree, a party
16 may request the Court rule on such disclosure. The parties agree that the
17 submission of Confidential Material to such person will be withheld pending the
18 ruling from the Court. If the Court orders, or if the Producing Party agrees, that
19 access to or dissemination of Discovery Material submitted as Confidential
20 Material shall be made to persons not qualified to receive such information
21 hereunder, such matter shall only be accessible to, or disseminated to, such
22 persons based upon the conditions pertaining to, and obligations arising from this
23 Order, and such persons shall be considered subject to it, unless the Court finds
24 that the Discovery Material does not constitute Confidential Material.

25 10. All Confidential Material produced in this Litigation may be used
26 only for purposes of this Litigation, including the litigation itself, any appeals, and
27 settlement and/or licensing negotiations intended to resolve this Litigation. All
28 Confidential Material shall be maintained and used by the parties and any person

1 listed in Paragraphs 5 and 6 only in the strictest of confidence and not disclosed to
2 any other person without the prior, written consent of the Producing Party or upon
3 order by the Court.

4 11. Deposition Procedures: In the event that a deposition in this litigation
5 is attended by a person not authorized to receive Confidential Material, then any
6 other party may have such person excluded from the deposition during any
7 portion(s) of the deposition that it reasonably believes may result in the disclosure
8 of its Confidential Material.

9 12. Response to a Subpoena / Court Order: In the event that a receiving
10 party receives a subpoena requesting or is ordered by another court or
11 governmental entity to produce the Confidential Material of another party, the
12 receiving party shall notify the Producing Party immediately of that subpoena or
13 order and shall promptly provide said subpoena or order, if it is in writing, to the
14 Producing Party so that the Producing Party may object to the subpoena or order.
15 If the Producing Party chooses to object to the subpoena or order, it shall provide
16 a copy of said objection to the receiving party. If the receiving party receives
17 nothing from the Producing Party prior to the time for its compliance with the
18 subpoena or order, the receiving party may comply with its obligations under the
19 subpoena or order.

20 13. In the event a party wishes to use any Confidential Material, or any
21 papers containing or making reference to the contents of such material or
22 information, in any pleading or document filed with the court in this Litigation,
23 such pleading or document and Confidential Material shall be filed under seal
24 utilizing the procedures set forth in Local Rule 79-5.1, until such time as the court
25 orders otherwise or denies permission to file under seal. The sealed material,
26 information, or papers shall plainly state on the first page of any bound or stapled
27 document “FILED UNDER SEAL PURSUANT TO PROTECTIVE ORDER.”
28 The restrictions, if any, that will govern the use of Confidential Material at trial or

1 hearings will be determined at a later date by the court, in consultation with the
2 parties.

3 14. Notwithstanding any other provision of this Order, a party producing
4 Confidential Material may choose to withdraw its designation by doing so in
5 writing.

6 15. Nothing in this Order constitutes a finding or admission that any of
7 the information disclosed or contained in the designated items is or is not
8 confidential, and nothing herein shall prevent any party from contending, during
9 the progress of this Litigation, that any or all of such information is not
10 confidential. Any party may request from the Producing Party a change in the
11 designation of any item or information and/or permission to disclose such item or
12 information to persons in addition to those specified herein in Paragraphs 5 and 6.
13 Such request shall be in writing, state the grounds, and be served on all counsel
14 including counsel for the Producing Party. The requested change shall occur or
15 the requested permission shall be granted, unless an objection for good cause is
16 served on the requesting party within twenty (20) business days after service of
17 such request. In the event such objection is timely served, neither the requested
18 change shall occur nor the requested permission shall be granted, until the
19 objection is resolved by written agreement of the parties or Order of this Court.
20 In any disagreement over a designation, the party making the designation bears
21 the ultimate burden of showing that the designation is proper. No party to this
22 Litigation shall be obligated to challenge the propriety of any designation, and a
23 failure to do so shall not act as a waiver of its right to make a subsequent attack on
24 the propriety of such designation, nor shall such failure to challenge constitute an
25 admission that any information is, in fact, confidential. Any designation of
26 information as Confidential Material shall govern hereunder unless and until such
27 designation is modified by the designating party, the Court, or agreement of the
28 parties.

1 16. Production by Non-Parties: If any Confidential Material is produced
2 by a non-party to this Litigation, such non-party shall be considered a Producing
3 Party within the meaning of those terms as used in the context of this Order and
4 shall have the right to designate information as “CONFIDENTIAL.”

5 17. The designation of any material in accordance with this Order as
6 Confidential Material is intended solely to facilitate the preparation and trial of
7 this Litigation, and treatment of such material by the parties in conformity with
8 such designation will not be construed in any way as an admission or agreement
9 by any party that the designated material constitutes or contains any trade secret,
10 Confidential Material.

11 18. Upon final termination of this Litigation, each party and other person
12 subject to the terms of this Order, including individuals required to execute the
13 undertaking attached hereto as Exhibit A, shall, within sixty (60) days of said
14 termination, assemble (including from all officers, employees, and in-house
15 counsel of the party, all support staff, and all experts and consultants) and return
16 to the Producing Party or certify (in writing) the destruction of all Discovery
17 Material designated as “CONFIDENTIAL,” including all copies and other items
18 of such Discovery Material, or in the alternative and at the option of the Receiving
19 Party, retain permanently all such Discovery Material so long as the Receiving
20 Party continues to maintain confidentiality.

21 19. Nothing in this Order shall be deemed a waiver of any right that any
22 party might otherwise have under the Federal Rules of Civil Procedure or the
23 Federal Rules of Evidence or the doctrines of attorney-client privilege or attorney-
24 work product. This Order shall be without prejudice to any party to oppose
25 production of any information or items on any ground permitted by the Federal
26 Rules.

27 20. Nothing in this Order shall affect a party’s use or disclosure of its
28 own Confidential Material in any way.

1 21. By signature of their respective counsel affixed below, each of the
2 parties warrants that it knowingly and willingly enters in this Order. This Order
3 shall be binding on the parties upon execution by their counsel notwithstanding
4 that the Court may not have entered the Order. Any modification of this Order,
5 including the incorporation of any additional parties appearing in the litigation
6 must be made in writing.

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8 | SO ORDERED:

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DATED this 27th day of March 2013.

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/s/ Andrew J. Wistrich

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Honorable United States Magistrate Judge

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1 STIPULATION AND ORDER FOR PROTECTIVE ORDER: EXHIBIT A
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8 UNITED STATES DISTRICT COURT
9 CENTRAL DISTRICT OF CALIFORNIA

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11 CONTINENTAL CASUALTY CO.,

12 Plaintiff,

13 v.

14 GOLDLINE INTERNATIONAL, INC.,

15 Defendant.

Case No. CV 12-08658 CAS (AJWx)
Assigned to District Judge:
Hon. Christina A. Snyder

**UNDERTAKING PURSUANT TO
PROTECTIVE ORDER**

Discovery Cutoff: October 15, 2013
Motion Cutoff: January 31, 2014
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16
17 GOLDLINE INTERNATIONAL, INC.,

18 Counter-Claimant,

19 v.

20
21 CONTINENTAL CASUALTY CO.

22 Counter-Defendant.

23
24 UNDERTAKING OF _____

25 STATE OF _____)

26) SS:

27 COUNTY OF _____)

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1 I, _____, being first duly sworn on oath,
2 depose and say:

3 1. I have read and understand the contents of the Stipulation and Order
4 for a Protective Order (“Protective Order”) dated _____, filed in the
5 above captioned litigation, and attached hereto.

6 2. I am properly classified as a “Qualified Person” identified in
7 Paragraph(s) _____ of the Protective Order, and I agree to comply with
8 the conditions provided in the Protective Order prior to any disclosure to me of
9 documents, things and/or any other information designated as containing, in whole
10 or in part, “Confidential Material”.

11 3. I expressly agree that all documents, things and information which
12 are disclosed to me pursuant to the Protective Order shall be maintained in strict
13 confidence, and I shall not disclose or use the original or any copy of, or the
14 subject matter of any of the documents, things or the information they contain,
15 except in accordance with the terms of the Protective Order.

16 4. I shall not use or refer to any of the documents, things and/or any
17 information that falls within the terms of the Protective Order other than in
18 connection with this litigation and as prescribed in the Protective Order.

19 5. Further, I shall, upon notification that this litigation has terminated,
20 return any and all originals and/or copies of the documents and things to counsel
21 for the party who provided such documents, and I shall destroy any notes or
22 memoranda I have which in any way concern the substance embraced by such
23 documents, things and/or information.

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1 6. I do and shall subject myself to the continuing jurisdiction of the
2 above-captioned Court over my person, wherever I shall be found, for purposes of
3 enforcement of the Protective Order.

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5 Date: _____

_____ [signature]

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7 Subscribed and Sworn to before me this

8 _____ day of _____, 2013.

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10 _____
Notary Public

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